

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
	)	
Ensuring Customer Premises Equipment	)	PS Docket No. 14-174
Backup Power for Continuity of	)	
Communications	)	
	)	
Technology Transitions	)	GN Docket No. 13-5
	)	
Policies and Rules Governing Retirement	)	RM-11358
of Copper Loops by Incumbent Local	)	
Exchange Carriers	)	
	)	
Special Access for Price Cap Local	)	WC Docket No. 05-25
Exchange Carriers	)	
	)	
AT&T Corporation Petition for	)	RM-10593
Rulemaking to Reform Regulation of	)	
Incumbent Local Exchange Carrier Rates	)	
for Interstate Special Access Services	)	

**COMMENTS OF VERIZON**

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**COMMENTS OF VERIZON**

The constant evolution in communications technologies has been a longstanding aspect of this country's networks. This steady innovation by communications providers, encouraged by the Commission's policies, has yielded enormous consumer benefits. Today, consumers demand ever faster and more reliable options to communicate, and have a wide range of services beyond Plain Old Telephone Service (POTS) available to them to meet their needs. The Commission's regulatory approach should continue to facilitate providers' ability to meet these demands by encouraging the rollout of new networks and services.

Under the current framework, Verizon and others have invested tens of billions of dollars to deploy the broadband networks that enable next-generation services to meet consumers' needs now and into the future. Customers have embraced new technologies and voluntarily moved

away from legacy voice services in extraordinary numbers; almost three-quarters of households nationwide now no longer receive telephone service over traditional copper facilities. More than 40 percent have cut the cord entirely and rely on wireless for voice service. And in the areas where Verizon's has deployed its fiber-based services, nine out of ten Verizon landline customers now receive service over fiber.

The investment in new broadband facilities, like other historical changes, rested on the understanding that providers would eventually replace legacy networks with newer, more reliable, more efficient ones. The Commission adopted rules more than ten years ago based on the premise that requiring providers to retain copper or other facilities no longer needed to serve their customers would necessarily divert resources from deploying or enhancing these new networks. Industry relied on these rules in investing billions of dollars to build out broadband networks, with the understanding that providers could retire redundant and less-efficient legacy networks and transition away from legacy services when it made sense to do so. And having relied on those rules, today Verizon passes 19.8 million premises with its all-fiber network.

In this proceeding,<sup>1</sup> the Commission now re-visits the successful framework that has encouraged unparalleled private investment in broadband networks by seeking additional information on how to revise rules for copper retirement, battery back-up, and Section 214 discontinuance applications. Some of the Commission's suggestions track existing practices or modify them in potentially helpful ways. For example, the FCC correctly proposes to stick with a notice-based copper retirement process.

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<sup>1</sup> See *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, et al.*, Notice of Proposed Rulemaking and Declaratory Ruling, PS Docket No. 14-174, GN Docket No. 13-5, RM-11358, WC Docket No. 05-25, RM-10593; FCC 14-185 (Nov. 25, 2014) ("*NPRM*").

Other proposed changes may have the opposite effect. For example, the proposals to lengthen the timeline for copper retirement notifications or expand its current definition of copper retirement may discourage providers from continuing to upgrade their networks or unduly delay the process. Similarly, some of the proposals on providing back-up power would actually limit customers' choices or restrict their abilities to take advantage of the multiple options already available to them.

As the Commission considers any changes to its rules, it should maintain its policies that encourage the orderly technology transitions that have already delivered tremendous benefits to consumers, and avoid creating unnecessary new regulatory roadblocks or burdens that have the opposite effect.

**I. UNDER THE EXISTING REGULATORY FRAMEWORK, MILLIONS OF CONSUMERS ARE BENEFITTING FROM THE MOVE TO NEXT-GENERATION FIBER**

**A. Change in Technology Is a Necessary and Consistent Hallmark of the Communications Industry**

The history of the public switched telephone network (PSTN) is one of continued technological change – and improvement – in the underlying facilities used to provide telecommunications services. Of course, with every technological advance, there are some who prefer the traditional and familiar to the modern. In 1930, the U.S. Senate passed a resolution requiring removal of dial telephones from the Capitol and return to human operators, and one Senator even proposed banning dial telephones from the District of Columbia entirely.<sup>2</sup>

There is no question that it would have been both bad policy and an impediment to technological progress and consumer welfare had carriers been required to continue to provide

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<sup>2</sup> See “Senate Considers Banning Dial Phones” (June 25, 1930), [http://www.senate.gov/artandhistory/history/minute/Senate\\_Considers\\_Banning\\_Dial\\_Phones.htm](http://www.senate.gov/artandhistory/history/minute/Senate_Considers_Banning_Dial_Phones.htm) (last visited Feb. 5, 2015).

outdated technologies (like the manual switchboard) after better alternatives became available. And thus, over the decades, countless technological advances have replaced previous, inferior technologies. As a result, working under the existing rules, providers dramatically reduced the cost and increased the quality of legacy communications services while also making possible the dramatic advances that enable new ways to communicate. Today's wide and growing range of providers and services is the result of these long-standing practices.

Customers have continued to drive the search for updated technologies and facilities beyond traditional copper facilities and TDM services. For more than a decade, consumers have shifted in massive numbers away from those legacy networks and services to new platforms for their communications. Today, 43 percent of residential customers nationwide have stopped using any sort of landline at home, and an additional 30 percent of all residential customers choose IP-based voice services from cable, fiber providers, or over the top voice providers as alternatives to legacy voice services.<sup>3</sup> In other words, almost three-quarters of residential customers nationwide – approximately 88 million households – no longer receive telephone service over the traditional copper facilities that were the backbone of the PSTN, and this number grows with every passing day. And this does not even include the millions of customers who increasingly rely on forms of communication other than voice, including e-mail, text messaging, instant messaging, and social media.

## **B. The Transition to Fiber Technology Has Benefited Customers**

Encouraging the deployment of next-generation fiber facilities has been a long-standing communications policy goal for a reason: fiber provides the best and most reliable platform to

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<sup>3</sup> United States Telecom Association, *Research Brief: Voice Competition Data Support Regulatory Modernization*, [http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014\\_0.pdf](http://www.ustelecom.org/sites/default/files/documents/National%20Voice%20Competition%202014_0.pdf), at 1 (Nov. 25, 2014).

meet consumers' communications needs now and into the future. As the Commission considers changes to its policies related to technology transitions, it should continue to take the many benefits of fiber into account.

**Increased Reliability.** Decades of experience confirm that fiber is a safe, proven, and known technology with a track record of serving communities well. From the perspective of reliability, fiber is immune to many environmental factors that affect copper cable, and is less likely to experience outages during weather events or other public safety emergencies. Fiber lines are generally more durable, do not corrode, have a much longer lifespan, and require fewer repairs than copper lines. Indeed, the Commission has determined that “the most efficient wireline technology being deployed today in new builds is FTTP.”<sup>4</sup>

The reliability advantages of fiber directly benefit customers. For example, as a result of Verizon's programs in recent years to encourage customers experiencing repeated service issues with aging copper facilities to migrate to fiber, Verizon estimates it has made approximately 1.4 million fewer repair or trouble-shooting dispatches than would have been required had these customers remained on copper facilities. Although it is hard to quantify these saved dispatches in terms of savings to customers, there is no question that many customers avoided the time and hassle of scheduling repair appointments and being home or missing work to meet a repair technician. If you assume that these customers were able to avoid a repair visit with a four-hour window, a conservative estimate of the consumer welfare gains from those avoided repairs would approach \$140 million.<sup>5</sup> Of course, there may be other ways to quantify the benefits as well, but regardless of the calculation the point is the same: benefits to customers are significant.

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<sup>4</sup> See *Connect America Fund*, Report and Order, 28 FCC Rcd 5301, ¶ 33 (2013).

<sup>5</sup> This values customers' time based on the national average hourly wage of \$24.57. See Bureau of Labor Statistics, Table B-3: *Average hourly and weekly earnings of all employees on private*

**Improved Performance.** Fiber also provides performance advantages, as it offers significantly greater bandwidth and is much less sensitive to distance limitations than is copper. Because the fiber optic signal is a light rather than an electrical signal, there is very little signal loss during transmission, and data can move at higher speed and for greater distances. And thus, fiber can support much higher speed services than copper. The White House recently noted, “as consumer and business uses of the Internet evolve, and new applications become more deeply embedded into everyday life, higher speeds frequently shift from being a luxury to a requirement for many users.”<sup>6</sup> Similarly, the Department of Commerce has highlighted the growing demand for higher speed services, noting that “multiple household members increasingly consumer video streaming services, music streaming, and online games,” and concluding that therefore “[b]roadband download speeds up to 10 Mbps may be less than optimal for increasingly popular higher-bandwidth applications such as streaming video and audio and multi-player online games, especially in households with multiple simultaneous Internet users.”<sup>7</sup>

In contrast, copper facilities face significant practical restrictions on the speed that can be transmitted. Although DSL technologies are widely used to provide broadband data services, fundamental physical principles restrict higher data rates to increasingly shorter loop lengths. Even with new attempts to increase data rates and the stability of data services over copper,

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*nonfarm payrolls by industry sector, seasonally adjusted*, <http://www.bls.gov/news.release/empsit.t19.htm> (last visited Feb. 4, 2015) (calculating average wage at \$24.57).

<sup>6</sup> The Executive Office of the President, *Community-Based Broadband Solutions: The Benefits of Competition and Choice for Community Development and Highspeed Internet Access*, [http://www.whitehouse.gov/sites/default/files/docs/community-based\\_broadband\\_report\\_by\\_executive\\_office\\_of\\_the\\_president.pdf](http://www.whitehouse.gov/sites/default/files/docs/community-based_broadband_report_by_executive_office_of_the_president.pdf), at 5 (January 2015).

<sup>7</sup> David N. Beede, U.S. Department of Commerce Economics and Statistics Administration, *Competition Among U.S. Broadband Service Providers* (OCE Issue Brief #01-14), <http://www.esa.doc.gov/sites/default/files/competition-among-us-broadband-service-providers.pdf>, at 1, 8 (Dec. 2014).



physical and practical limitations severely limit where these higher speed services can be provided over copper and increase the costs to do so. As technology attempts to achieve speeds over copper that are parallel to those achievable over fiber, the costs of installation and maintenance can become greater than the cost of deploying the superior fiber facilities.

**Improved Energy Efficiency.** Fiber facilities are more energy efficient than copper because they use laser light – not an electrical signal – reducing energy consumption and resulting in a greener network. In contrast, copper networks include active electronics that require substantially more electricity to operate than do fiber networks. And the least energy efficient approach of all is to power parallel, redundant networks, when one would suffice to serve customers. Once copper is retired, only the more efficient fiber network will consume energy going forward.

The cost of keeping copper facilities maintained and running in areas where next-generation networks have been deployed is substantial. Where Verizon's all-fiber network has been deployed, our cost of maintaining parallel copper facilities is more than \$200 million per year, even if no or few customers are using the legacy facilities.<sup>8</sup> These costs stem from ongoing maintenance required regardless of usage; maintenance costs tied directly to usage; and costs related to local property taxes and pole attachment fees. If it becomes more difficult to retire copper in a timely manner, providers experience added costs ultimately borne by consumers and may divert resources that otherwise could be expended enhancing and extending the capabilities of fiber networks. Indeed, the original business case for fiber deployment assumed operational savings from the lower costs associated with serving customers over fiber and from retiring

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<sup>8</sup> See Comments of Verizon and Verizon Wireless, *Technological Transition of the Nation's Communications Infrastructure, et al.*, WC Docket No. 12-353, at 11 & attached at Exhibit A (March 5, 2013).

copper where it was no longer needed. Investors relied on these anticipated cost savings in their decision to provide the many billions needed to deploy an all-fiber network.<sup>9</sup>

**World Class Service for Communities.** Communities throughout the United States have been clamoring for the faster Internet access speeds, video content, and greater reliability available only over fiber. They recognize that the future-proof nature of fiber-based services improves their competitiveness and benefits their residents. In response to these demands, providers across the country have worked to deploy fiber and cable technologies that allow for increased capabilities and greater reliability.

Verizon has been the leader in fiber deployment over the last decade, investing tens of billions of dollars to deploy fiber all the way to consumers' homes. Verizon launched the deployment of our all-fiber FiOS network in 2004. Today, Verizon passes more than 19.8 million premises with its all-fiber network, and, soon, about 70 percent of the premises in our landline territory will have access to our all-fiber facilities. Customers have strongly embraced fiber: we have about nine times as many customers on fiber facilities as those still on copper in the areas where we have deployed fiber, and that ratio keeps increasing.

In some communities, we have already successfully completed the migration to all-fiber facilities. Verizon customers in two New Jersey communities and one Virginia community have been served over fiber facilities since the mid-1990s. Several years ago, all Verizon customers in Bartonville, TX, and Verizon's consumer and mass business customers in Wesley Chapel, FL, also made the shift to fiber. Following Hurricane Sandy, Verizon customers served out of two wire centers in Lower Manhattan are now served over fiber facilities. And within the last year, Verizon has been working to transition six wire centers completely to fiber. To make these

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<sup>9</sup> *See id.* at 12-13.

migrations a success, we worked with our customers, as well as the Commission and other policymakers, to provide them with the information they needed and to address any concerns.

Similarly, other providers – most notably including rural telephone companies – have also made this shift away from legacy copper. For example, Smithville Telecom advertises its use of “traditional voice over a 100% facilities-based fiber optic network,” and touts its “consistent, reliable telephone” service over fiber.<sup>10</sup> C-Spire has begun rolling out its Fiber to the Home service, selling consumers on its “ultra high speed Fiber” and “Fiber Home Phone service [that] comes complete with all your favorite features.”<sup>11</sup> In an NTCA survey in 2012, 74 percent of the respondents deployed fiber to the home in some capacity, and 10 percent were using *only* fiber facilities to provide voice and other services, under existing FCC procedures.

Local governments including Austin, TX; Kansas City, KS; and Provo, UT have courted providers to bring fiber to their communities, or have expended tax-payer dollars to build wide-reaching fiber-based networks themselves. And Google has recently announced plans to expand their build to Atlanta, GA; Charlotte and Raleigh-Durham, NC; and Nashville, TN.<sup>12</sup>

### **C. The Proposed Changes to the Copper Retirement Process May Discourage Fiber Deployment and Confuse Consumers**

#### **1. The Commission’s Current Notice-Based Process Encourages Fiber Deployment**

The Commission has previously concluded that imposing regulatory burdens on retiring copper would divert resources better spent deploying new technologies. Section 251(c)(5) of the

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<sup>10</sup> See Smithville® Telecom, *Services*, <http://digital.smithville.net/services/telephone> (last visited Feb. 5, 2015).

<sup>11</sup> See C Spire Home Phone, <https://www.cspire.com/cms/home-services/packages/About-Home-Phone/> (last visited Jan 23, 2015).

<sup>12</sup> *Google Fiber is coming to Atlanta, Charlotte, Nashville and Raleigh-Durham*, Google Official Blog, <http://googleblog.blogspot.com/2015/01/google-fiber-new-metro-areas.html> (Jan. 27, 2015).

1996 Act creates a “duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier’s facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks.”<sup>13</sup> Rather than requiring an affirmative approval for network changes such as the retirement of copper, Congress specifically rejected statutory language that would have required Commission approval before retirement of any previously authorized facilities.<sup>14</sup> The Commission has interpreted this duty to obligate one class of providers – incumbent local exchange carriers (ILECs) – to provide public notice of “network changes,” which includes both specific activities such as “the replacement of [copper] loops with fiber-to-the-home loops,”<sup>15</sup> as well as broad categories like anything that “[w]ill affect a competing service provider’s performance or ability to provide service.”<sup>16</sup>

As part of its framework expressly aimed at encouraging fiber investment, the Commission determined in the *TRO* that ILECs may retire copper facilities after deploying fiber, subject only to the obligations to comply with the Commission’s network disclosure rules and to provide competitive providers with access to narrowband capabilities over fiber.<sup>17</sup> The Commission specifically addressed and rejected proposals that would require affirmative regulatory approval prior to the retirement of any copper loop facilities.<sup>18</sup> The Commission

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<sup>13</sup> 47 U.S.C. § 251(c)(5).

<sup>14</sup> Congress would not have needed to adopt that notice requirement if § 214(a) already required both notice and approval for such network facilities changes.

<sup>15</sup> 47 C.F.R. § 51.325(a)(4).

<sup>16</sup> *Id.* § 51.325(a)(1). *See also id.* §§ 51.329(a)(2), 51.333(a), 51.333(b)).

<sup>17</sup> *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16,978, ¶¶ 273, 281 (2003) (“*TRO*”).

<sup>18</sup> *See id.*, ¶ 281.

concluded that such proposals were “not necessary” and that the established network disclosure rules would best encourage all providers, including other providers, to invest in broadband facilities.<sup>19</sup> Pursuant to these rules,<sup>20</sup> the Commission provided for a period of notice to the public and to interconnecting carriers, and created a specific time frame for objections that would both allow well-founded objections to be heard but also not delay retirement more than six months from the provider’s notice. The Commission acknowledged that requiring providers to retain copper or other facilities no longer needed to serve their customers would necessarily divert resources better spent deploying or enhancing the networks that they intend to use to serve their customers, to the detriment of consumers.<sup>21</sup>

As written, these rules already provide notice to the Commission and to potentially affected carriers in multiple ways: a carrier must provide notice directly to affected wholesale customers, as well as provide notice of the network changes on the carrier’s website, and then file with the Commission an additional notice announcing the same network change.<sup>22</sup> The rules also allow parties seeking a limited delay to the replacement of copper with fiber to file objections to the notice filed with the Commission, which results in a process that can take three

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<sup>19</sup> *See id.*

<sup>20</sup> *See* 47 C.F.R. § 51.333.

<sup>21</sup> *See* FCC, *Connecting America: The National Broadband Plan*, at 48-49 (2010), <http://download.broadband.gov/plan/national-broadband-plan.pdf> (stating that incumbents forced to retain redundant copper networks would have reduced incentives to invest in and deploy next generation facilities). Relatedly, in the USF context the Commission has recognized that it makes no sense to support duplicative networks, and has accordingly proposed that support be limited to “[a] single fixed broadband connection” per residence/household. *Connect America Fund; et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 1256 (2011).

<sup>22</sup> *See* 47 C.F.R. §§ 51.325-51.333.

months or more to resolve before ILECs are allowed to retire the copper, even when they no longer use it to serve their customers.<sup>23</sup>

## **2. The Commission Should Not Undermine Its Existing Policies by Adding Impediments to Copper Retirement**

The Commission's continued reliance on a notice-based copper retirement process, as proposed in the *NPRM*, will continue to facilitate the move the fiber. As the Commission has observed, some of the existing copper retirement and network change rules "may no longer be necessary in the public interest as a result of meaningful economic competition;"<sup>24</sup> there is no need to make the process more restrictive.

As the Commission considers new notices or paperwork to add to the existing process, it should ensure that any revisions, such as to expand the notice requirements, do not create confusion or disrupt the process that to date has been remarkably uncontroversial and reasonably streamlined. Further, the Commission should be wary of creating more barriers to timely and efficient copper retirement so as not to provide disincentives to deploy fiber and retire copper.

### **a. The Commission Should Not Expand the Definition of "Copper Retirement"**

The Commission has inquired whether it should adopt a definition of "copper retirement" that includes "de facto" retirement of copper facilities that experience repeated troubles.<sup>25</sup> The Commission should not encroach onto traditional state jurisdiction regarding ongoing maintenance obligations by imposing new requirements relating to "de facto" retirement, and instead should focus on improving customer service by encouraging the move to more reliable fiber. Moreover, it would be inefficient to require what could essentially become loop-by-loop

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<sup>23</sup> See *id.* §§ 51.333(d)-(f).

<sup>24</sup> See *Commission 2010 Biennial Review of Telecommunications Regulations*, Public Notice, 26 FCC Rcd 16,943, 16,944 (2011).

<sup>25</sup> See *NPRM*, ¶¶ 52-53.

“copper retirement” notice in these circumstances with burdensome and unnecessary monitoring obligations, even for legacy facilities that are not in use. Such requirements would divert valuable resources, including away from places where copper is actually in service.

**b. The Existing Wholesale Notifications Are Sufficient**

The current copper retirement procedures are effective at providing wholesale customers with notice of upcoming copper retirements, and there is no reason to expand them.

First, the Commission should reject the *NPRM*’s proposal to expand the existing wholesale notification requirements to require description of the impact of planned copper retirements, including “any changes in prices, terms, or conditions that will accompany the planned changes.”<sup>26</sup> This new requirement would prove difficult to comply with, as providers are not generally aware of all of the services and terms under which a CLEC may be offering a resold service, nor are providers aware of what particular options might best fit a CLEC or its end user’s needs going forward. Instead, providers should be able to comply by explaining the technical details of their proposed modification or retirement, so that wholesale customers can best determine how they might be affected. Additionally, any requirement that a notice contains statements describing changes to the underlying facilities should not be read to require that no changes are permissible or that all underlying products or services must continue to be offered should copper be retired. Of course, if an interstate telecommunications service is to be discontinued, reduced, or impaired at the same time as copper is being retired, a separate Section 214 application may be required. But there is an important difference between changing facilities, such as by retiring copper, and discontinuing a service, and any blurring of this distinction will result in confusion and duplicative regulatory processes.

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<sup>26</sup> *Id.*, ¶ 57.

Second, the new rules should not require, as the *NPRM* proposes,<sup>27</sup> that all copper retirements, regardless of the proposed length of time of the notice, comply with the enhanced procedures required for network changes being made in the “short term.” The Commission expressly noted that it has “not addressed the question of whether under our current rules an incumbent LEC must comply with the short term notice provisions for a copper retirement if it wishes to provide six months or more of advanced notice.”<sup>28</sup> Where a provider gives notice of planned copper retirements more than six months in advance of the retirement, other providers have ample time to take steps to accommodate the change. Under those circumstances, there is no justification for the more burdensome short-term rules.

Third, the Commission should not extend the minimum ninety-day advance notice period for copper retirement. While in many instances providers give a lengthier notice period, there may be circumstances in which shorter durations make sense – for example, where copper facilities are no longer being used to serve any customers (wholesale or retail) in an area. The existing requirement that ILECs shall give their public notice at their “make/buy” point, as required by § 51.331 is more than sufficient to provide competitors and customers with as much notice as the ILEC itself has; longer notice or any requirement of annual forecasts of expected copper retirements or other network changes are neither necessary or practical.

**c. Providers Should Have Flexibility in Providing Notices to Consumers and Other Relevant Parties**

It is reasonable to expect that providers provide their customers with adequate information about their services; this is occurring today. For example, when migrating customers from copper-to-fiber, Verizon has reached out to consumers repeatedly and on a one-

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<sup>27</sup> *NPRM* ¶¶ 57, 59.

<sup>28</sup> *Id.* at n.148.



on-one basis to describe the migration process and the effects on them. Among other things, we explain to traditional voice customers that they will continue to be able to receive the same regulated legacy voice services over fiber that they did over copper, at the same price, terms, and conditions. As a practical matter, in order to make such changes, providers will almost always need to communicate with customers directly. But because each will present its own unique set of issues, providers need flexibility in determining how to most effectively to communicate most effectively with their customers.

The Commission here proposes to require new notices to consumers when providers retire copper. But given the variations in how and when migrations will take place, a one-size-fits-all approach to notice will be ineffective, and adding additional regulatory notices or mandating specific information could unnecessarily confuse customers if not handled appropriately. And thus, while the Commission may consider the possibility of requiring providers to describe in a general way the types of information to be communicated, it should leave flexibility for providers to determine how most effectively to do so. For instance, providers should have flexibility in how they provide any required notices to consumers, and be permitted to use bill notices, email, and/or U.S. mail, in addition to automated notifications, telephone calls, and/or in-person conversations to reach consumers.

The Commission should also grant providers flexibility to discuss generally the nature of the changes and provide an avenue for further communications should the customer have questions. This permits providers and customers who so desire to have conversations about the appropriate options for a customer for products beyond POTS over fiber. Further, because providers cannot guess what CPE a customer may have and/or how the customer may use it, providers should not have to include information speculating about how particular CPE might be

affected, as suggested.<sup>29</sup> Moreover, any notices should be limited to existing customers currently served by copper facilities. Other consumers can receive information about available services when they seek to order them.

The Commission also suggests allowing retail customers 30 days in which to comment on a proposed copper retirement from the date the Bureau releases the Public Notice.<sup>30</sup> The rules currently permit competitive providers the opportunity to request extensions within nine business days of a Public Notice, with any submissions required to be documented and supported by affidavit so as to minimize frivolous objections or delaying tactics.<sup>31</sup> And such documented objections are extraordinarily rare. Indeed, throughout Verizon's latest copper retirement or network modification processes, it has not received a single such documented objection. In the same vein, while the Commission may insert a public comment period, such comments should be similarly supported and documented, so that providers may try to work with a customer or competitor to address any real, systemic issues potentially raised by a particular planned copper retirement date. Generalized prejudice against fiber or preference for copper, standing alone, should not be sufficient to delay a copper retirement.

Separately, the Commission also has recommended that providers send notice of copper retirements to states and the Department of Defense, similar to those sent in section 214 proceedings.<sup>32</sup> Expanding that notice requirement to other state or federal agencies could introduce new and unwarranted complexity into the process. Those agencies who are customers

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<sup>29</sup> See *NPRM* ¶ 61 (suggesting that a notice be required for anyone “who will need new or modified CPE or who will be negatively impacted by the planned network change”).

<sup>30</sup> See *id.* ¶ 68.

<sup>31</sup> See 47 C.F.R. § 51.333(c).

<sup>32</sup> See *NPRM* ¶ 79.

will receive notices in the regular course, pursuant to the Commission's other proposed notification requirements; additional notices could prove unnecessary confusing or redundant.

**d. Any Sale of Copper Should Be Voluntary**

The Commission also seeks comment on the sale of copper facilities that ILECs may otherwise intend to retire. Selling these facilities would be easier said than done, due to the intertwined way that copper and fiber facilities often are deployed and the required ongoing engagement from ILECs that might be necessary to make such a sale work. Thus, the Commission should not create any obligations to require providers to offer such copper facilities for sale. Instead, to the extent feasible, providers and competitors could discuss options and alternatives where a sale might be commercially reasonable. Competitive providers and others possibly interested in purchasing copper should be encouraged to submit substantive indications of interest to incumbents, but neither the Commission nor state public commissions should interpose auction or sale rules or procedures or engage in rate setting.

**II. BACK-UP POWER REQUIREMENTS SHOULD PERMIT DIVERSE APPROACHES AND ALLOW CUSTOMERS TO CHOOSE THE OPTIONS THAT BEST FIT THEIR NEEDS**

Although modern communications networks – whether fiber or cable – do not include the line-powering often available from legacy copper facilities, providers have developed a variety of battery back-up options to support voice services during commercial power outages. Tens of millions of customers are served by these networks and have the option of using back-up batteries. Given the different technical approaches among providers and the different interest level among consumers, providers today offer a variety of options for back-up power for those customers who value it.

Notwithstanding the availability of backup batteries, many customers today choose not to obtain a battery, given the growing reliance on wireless or the customers' use of handsets or

other devices that themselves require commercial power to operate. Thus, even with a line-powered line, many of these devices are not operable during a commercial power outage. Other customers choose not to have batteries because they are concerned about the environmental impact of batteries over time. But for those who do wish to have a battery back-up for voice services, providers offer customers the option of a battery back-up should they wish to have voice service during commercial power outages. Companies such as Comcast, Cablevision, and Cox offer a battery with eight hours of backup, and Time Warner offers a battery with a choice of eight or twelve hours. Verizon has offered customers a similar 12-volt battery that provides up to 8 hours of backup for voice services.<sup>33</sup> Additionally, Verizon is rolling out a new approach that uses standard D-Cell batteries that are more readily available and replaceable than 12-volt batteries and that provides back-up power for up to 24 hours (which can easily be extended by customers).<sup>34</sup>

This growing variety of backup battery options gives consumers a wide range of choice, depending on their particular needs. Customers who do not need or want battery back-up are not forced to take one; those who do have options, including the Verizon alternative that would allow a customer to use (and stockpile for themselves) off-the-shelf D-cell batteries to provide service for as long as they needed. Leaving control of battery back-up needs in the hands of consumers allows them to be the best judge of their needs.

Thus, in light of the multiple options providers already are offering, at most the Commission should, as it suggests, require providers to offer customers the ability to purchase a

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<sup>33</sup> Importantly, Verizon's tariffs and product guides, like those of various other providers, make clear that providing power is not part of the services we are offering, and that ultimately, the customer is responsible for providing power.

<sup>34</sup> All of the backup batteries offered by Verizon back-up the voice port on the Optical Network Terminals, or "ONTs," at our customers' homes, which are Verizon network equipment and not CPE.

battery back-up option that will support voice service for eight hours during commercial power outages. Customers should be free to decline the battery, depending on their personal preference.

Several of the other suggested requirements in the *NPRM*, however, go well beyond providing consumers with options to address their concerns related to power outages. For example, the *NPRM* asks whether a provider should provide back-up power for a customer's CPE, such as their telephone sets. But providers do not own, and are not responsible for CPE, and are not in a position to understand what types of battery back-up might be either appropriate or preferred by customers. Moreover, as noted above, even customers who today have plain handsets that do not require electrical power routinely choose not to obtain back-up power.

The Commission also should not require providers to monitor batteries for remaining capacity, or to re-supply batteries when they are low. Not only are providers not equipped to act as supply chains for batteries throughout their footprint, but such a monitoring and re-supply requirement would go far beyond any reasonable expectation for a service provider. Consumers' role in monitoring and replacing batteries is similar to the role they are already accustomed to for such other important devices as smoke detectors and fire alarms. Moreover, providers' systems and equipment may not be currently designed to monitor the status of batteries, and it would be a massive and costly shift in technology to implement new monitoring capacity.

The Commission also would be broadly overreaching to impose equipment-related requirements such as these on service providers – even more so if it required manufacturers to include battery back-up in their CPE or other devices, or to require customers to have a home generator or other device to power them.<sup>35</sup> The Commission does not “have general jurisdiction

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<sup>35</sup> See *NPRM* ¶ 45.

over devices that can be used for receipt of wire or radio communication *when those devices are not engaged in the process of radio or wire transmission.*”<sup>36</sup> Yet that is exactly what some of the *NPRM*’s proposals would require here. And none of the cited statutory provisions otherwise confers such an expansive grant of authority, either directly or in support of Title I jurisdiction:<sup>37</sup> the cited 911-related statutes relate to the provision of service and network-level capabilities;<sup>38</sup> section 201(b) relates to just and reasonable practices relating to “communication services,” which CPE is not;<sup>39</sup> section 214(d) relates to a provider’s obligation “to *provide itself* with adequate facilities” which would exclude customer- or carrier-provided CPE and other consumer-level equipment;<sup>40</sup> section 214(a) relates to the terms and conditions of a provider’s discontinuance of “service,” not its or third parties’ offerings of CPE and other consumer-level equipment;<sup>41</sup> and section 303(b) relates to the conditions of spectrum licenses, which are unrelated to the equipment and services here.<sup>42</sup>

Should the FCC decide to change course and require providers to assume responsibility for battery back-up, it should not be done in such a drastic manner as to usurp customers’ control over their own decisions or devices.<sup>43</sup> Further, providers should be permitted to offer customers

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<sup>36</sup> *American Library Ass’n v. FCC*, 406 F.3d 689, 703 (D.C. Cir. 2005) (emphasis added).

<sup>37</sup> See *NPRM* ¶¶ 43-44.

<sup>38</sup> 47 U.S.C. § 251(e)(3) (911 designation “shall apply to both wireline and wireless telephone service”); *id.* § 615a-1(a), (c)(1)(B) (applying 911/E911 rules to “each IP-enabled voice service provider ...”; *id.* § 615c(g) (relating to “access by individuals with disabilities to an Internet protocol-enabled emergency network.”).

<sup>39</sup> 47 U.S.C. § 201(b).

<sup>40</sup> 47 U.S.C. § 214(d) (emphasis added).

<sup>41</sup> 47 U.S.C. § 214(a).

<sup>42</sup> 47 U.S.C. § 303(b).

<sup>43</sup> Of course, any such decision would apply to all facilities-based providers of fixed voice service, not just legacy telephone providers.

the option of self-installing their service (where the existing facilities so permit), and should grant providers flexibility in how they communicate with their customers about their back-up power options.

Finally, while the *NPRM* seeks comment on several issues concerning the implications of technology transitions on 911 service, these concerns have little to do with backup batteries provided to consumers and should be considered separately. As a threshold matter, Verizon's fiber facilities work with 911 providers in the same way as copper does and provides the same street level address information. Good service provider practices concerning battery back-up and other network back-up power measures will allow consumers to provide for continuity of service for both 911 and non-911 calls.

Moreover, breaking down CPE and network capabilities in terms of inbound and outbound dialing features as the *NPRM* suggests is unnecessary and could have unintended consequences. For example, blocking non-911 inbound calls would have the effect of blocking urgent calls from family members or doctors, and could impose burdens on consumer equipment manufacturers, public safety stakeholders, and state and local governments.<sup>44</sup>

The Commission already is considering rules relating to several public safety issues in the *NPRM*, and those proceedings are more appropriate forums to consider these issues. The Commission has requested comment on issues concerning the discontinuance of 911 services in its *911 Governance and Accountability* rulemaking,<sup>45</sup> so questions about Section 214 and 911 service discontinuance should be addressed there.<sup>46</sup> Issues concerning the type of location

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<sup>44</sup> See *NPRM* ¶ 34.

<sup>45</sup> See *911 Governance and Accountability; Improving 911 Reliability*, Policy Statement and Notice of Proposed Rulemaking, 29 FCC Rcd 14,208, ¶¶ 48-63 (2014).

<sup>46</sup> See *NPRM* ¶ 100.

delivered to PSAPs, including from wireless and interconnected VoIP providers, are the subject of new FCC rules and pending rulemaking proceedings, and new innovative 911 solutions are under development.<sup>47</sup> The FCC should not take any action here that would undermine its objectives in those proceedings or inadvertently discourage development of new 911 technologies. Nor should the FCC act here in a manner that precludes a technology-neutral approach that affords providers flexibility to meet consumer 911 needs.

### **III. THE COMMISSION SHOULD NOT INCORPORATE NEW PRESUMPTIONS OR PRICING-BASED OBLIGATIONS IN THE DISCONTINUANCE PROCESS**

#### **A. The 214 Discontinuance Rules and Obligations Are Intended to Ensure Communities Do Not Lose Service**

The notice and discontinuance requirements of Section 214(a) since their inception have been targeted at “preventing a loss or worsening of a service offering to a community or part of a community.”<sup>48</sup> The process was not adopted to handicap providers’ abilities to upgrade to new technologies, introduce updated services, or eliminate outdated legacy services. Nor is there statutory support for an interpretation that would serve to micromanage providers’ technology decisions. The primary focus of Section 214(a) analysis “should be on the end service provided by a carrier to a community or part of a community, *i.e.*, the using public.”<sup>49</sup> As the D.C. Circuit

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<sup>47</sup> See *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, PS Docket No. 07-114, FCC 15-9, ¶¶ 43-44 (Feb. 3, 2015) (describing forthcoming wireless “dispatchable location” capability consisting of the 911 caller’s civic address and additional information like floor, suite, or apartment number); *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules; Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers*, Notice of Proposed Rulemaking, Report and Order and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 10,074, ¶¶ 40-80 (2011) (seeking comment on E911 location capabilities for VoIP services).

<sup>48</sup> *Lincoln County Telephone System, Inc.*, Memorandum Opinion and Order, 81 F.C.C.2d 328, ¶ 11 (1980).

<sup>49</sup> *Western Union Telegraph Co.*, Memorandum Opinion and Order, 74 F.C.C.2d 293, 296 (1979) (“*Western Union Order*”).



recognized in refusing to extend Section 214 to circumstances where no service is affected, “[t]he attendant burdens” of such an expansive application “would be enormous.”<sup>50</sup>

As originally enacted in the Communications Act of 1934, Section 214 addressed only the construction or extension of new lines, or the acquisition and operation of such lines, by carriers of wire or radio communications.<sup>51</sup> In 1943, Congress amended the Communications Act to allow for mergers of telegraph companies.<sup>52</sup> Driven by a concern “that such mergers might result in a loss or impairment of service during this war time period,”<sup>53</sup> Congress simultaneously revised Section 214 to require Commission approval before carriers could “discontinue, reduce, or impair service to a community, or part of a community.”<sup>54</sup> As the Commission has recognized, Congress’s particular worry was that merging telegraph companies might disrupt communications service to critical military and industrial facilities in wartime.<sup>55</sup>

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<sup>50</sup> *Aeronautical Radio, Inc. v. FCC*, 642 F.2d 1221, 1233 (D.C. Cir. 1980). In *Aeronautical Radio*, the court affirmed the Commission’s ruling that § 214(a) did not apply to elimination of TELPAK option for bulk ordering of private line service, because the elimination of a rate discount was not a discontinuance or impairment of any service. As the court explained, “[a]ll the services which had been offered under the TELPAK tariff were still available thereafter from AT&T pursuant to other tariffs or other sections of the same tariff; only the rates differed.” *Id.*

<sup>51</sup> *See An Act To Provide for the Regulation of Interstate and Foreign Communication by Wire or Radio, and for Other Purposes*, Pub. L. No. 73-416, 48 Stat. 1064, 1076 (1934).

<sup>52</sup> *See An Act To Amend the Communications Act of 1934, As Amended, to Permit Consolidations and Mergers of Domestic Telegraph Carriers, and for Other Purposes*, Pub. L. No. 78-4, 57 Stat. 5 (1943) (“1943 Act”).

<sup>53</sup> *Western Union Order*, ¶ 6 n.4 (discussing statutory purpose in refusing to apply § 214(a) to a carrier’s change, rather than discontinuance, of service).

<sup>54</sup> 1943 Act, at 11.

<sup>55</sup> *See Western Union Order*, ¶ 6 n.4; *see also, e.g.*, H.R. Rep. No. 78-69, at 10 (1943) (emphasizing that the statutory term “community” “is broad enough to prevent, without Commission approval, the discontinuance of service to a military establishment or war production plant”); S. Rep. No. 78-13, at 4 (1943) (quoting a committee recommendation that the legislation should ensure that, “in the event of either domestic or international mergers, there shall be no reduction in telegraph circuit facilities for the armed services or other Government agencies during the present emergency”).

Reflecting its focus on actual service disruptions, Congress expressly declined to require carriers to seek permission every time they made a change in network facilities or otherwise changed their services in ways that did not deprive a community of the service. The original Senate version of the bill would have mandated Commission approval for a carrier's "abandonment of a line, plant, office, or other physical facility."<sup>56</sup> The House struck the Senate's language and replaced it with the following provision: "No carrier shall discontinue service to a community, or part of a community," without obtaining a certificate of public convenience and necessity from the Commission.<sup>57</sup> Further confirming that Section 214 was not intended to hamper providers' decisions concerning how they provide service, the House also added the proviso that still appears at the end of subsection (a): "nothing in this section shall be construed to require a certificate or other authorization from the Commission for any installation, replacement, or other changes in plant, operation, or equipment, other than new construction, which will not impair the adequacy or quality of service provided."<sup>58</sup>

The language ultimately adopted by Congress – which has remained in the statute for more than sixty years – requires a Section 214 application before a carrier may "discontinue, reduce, or impair service to a community, or part of a community," and maintains the House's proviso that approval is not required for plant or equipment changes that are not accompanied by

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<sup>56</sup> 78 Cong. Rec. 777 (1943).

<sup>57</sup> *See id.* As one Representative explained, the House recognized that two merging telegraph companies might each have offices in a particular community, one of which might be abandoned following the merger. "It is obvious that one office might be entirely sufficient for the community." *Id.* at 786; *see also id.* ("I do not believe that the Congress or the country is interested in whether the telegraph company should abandon or take out a certain insulator or pole or even close down one office, if the community is adequately served by another office. The only thing that the Congress and the country is interested in is adequate service.").

<sup>58</sup> H.R. Rep. No. 78-69, at 10 (1943).

an impairment in service.<sup>59</sup> Congress explained that this language would relieve carriers of any burden to file large numbers of applications for “minor installations or abandonments,” while ensuring that no community would be “deprived of any element of service presently received from any telegraph or telephone company.”<sup>60</sup>

The Commission should not and cannot now reinterpret Section 214 to create a broad authority for regulatory micro-management of service providers’ decisions concerning how they provide their services, nor is there a reason to do so. In fact, far from being overly lax, the existing rules, in practice, already can result in inefficiency and delay. The current rules dictate that applications under Section 214 will be granted on the thirty-first or sixtieth day following public notice, unless the Commission takes action to remove an application from the automatic effective date schedule.<sup>61</sup> But there is no time period prescribed for how quickly the Commission must issue its public notice following the filing of a Section 214 application, nor are there any timelines or restrictions on what happens to an application after the Commission takes it off of the automatic grant schedule.

In current practice, even routine applications regularly are taken off of the automatic grant schedule and delayed. For example, the Commission recently withdrew from the Section 214 automatic-grant track an application to discontinue certain services based on a single

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<sup>59</sup> See H.R. Rep. No. 78-142, at 14 (1943) (Conf. Rep.).

<sup>60</sup> 78 CONG. REC. at 1093; *see also id.* (clarifying that applications would be required only when changes to existing facilities were of such “a degree that service is affected”); H.R. REP. NO. 78-142, at 14 (1943) (Conf. Rep.) (citing desire “to avoid imposing on the carriers the necessity for making a burdensome number of applications”).

<sup>61</sup> 47 C.F.R. §63.71(c).

customer's objection.<sup>62</sup> The application involved an enterprise service provided on non-dominant basis by a Verizon affiliate. The customer objected after the deadline, only five days before the application would have been granted automatically. It soon became clear that this customer misunderstood the effect of Verizon's application, nevertheless we promptly amended the application to address the customer's concerns. The Commission did not grant the application until eight months later: nearly a year after the initial application was filed and seven months after the applicant amended the application in response to the customer's concerns.<sup>63</sup>

When carriers must continue offering services for longer than they intended during the resultant delay, their plans to transition to newer products and services can be impeded or put on hold while the Section 214 process plays out. And they are forced to expend resources supporting outdated services for an indefinite period. If anything, the Commission should adopt a requirement on itself that it will both issue its public notice within a definite time period after an application is filed, such as within 30 days, and should adopt procedures and a timeline for how it will address applications it takes off of the automatic grant path.

**B. New Wholesale Requirements That Would Slow Parties' Abilities to Update Their Service Offerings Are Unnecessary**

For decades, the Commission correctly has focused on end-user customers when applying Section 214(a). While the Commission claims that it intends to maintain that precedent, several of the *NPRM*'s proposals deviate from it in ways that would impede technology transitions and

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<sup>62</sup> See *Application of MCI Communications Services, Inc. d/b/a Verizon Business Services to Discontinue Domestic Telecommunications Services not Automatically Granted*, Public Notice, 28 FCC Rcd 16703 (2013).

<sup>63</sup> See *Section 63.71 Application of MCI Communications Services, Inc. d/b/a Verizon Business Services for Authority to Discontinue Domestic Telecommunications Services*, Order, 29 FCC Rcd 9670 (2014).

harm end users. The Commission should not adopt an expansive new approach to Section 214 applications that would expand wholesale obligations.

**1. A Strict-Equivalence Replacement Standard Would Make Discontinuing Legacy Services Unnecessarily Difficult**

The Commission should not require ILECs that seek to discontinue service that other carriers use as a wholesale input to provide equivalent wholesale access on equivalent rates, terms, and conditions. At most, if Section 214(a) applies at all to a particular discontinuance, any provider's offering of a reasonably comparable service should suffice.

The communications marketplace is highly competitive. Intermodal competitors vie every day to provide new services to customers over new platforms and networks. Incumbent LEC voice market shares have fallen by mid-2013 to less than 40 percent of the lines served at the end of 2000.<sup>64</sup> Incumbent LEC business line counts from December 2008 through December 2013 declined by about 30 percent.<sup>65</sup> At the same time, cable providers and other non-ILECs are growing their business line counts and their voice lines.<sup>66</sup> Mobile broadband subscriptions have grown from three million at the end of 2005 to nearly 200 million by the end of 2013.<sup>67</sup> As of year-end 2013 there were more than 310 million wireless voice connections in the U.S. as of 2013,<sup>68</sup> more than twice the number of in-service access lines.<sup>69</sup> And cable companies and other

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<sup>64</sup> Compare Industry Analysis and Technology Div., FCC, *Local Telephone Competition Report: Status as of December 31, 2009*, at 12, Table 1 (Jan. 2011), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-304054A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-304054A1.pdf), with Industry Analysis and Technology Div., FCC, *Local Telephone Competition Report: Status as of December 31, 2013*, at 5, Figure 4 (Oct. 2014), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-329975A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-329975A1.pdf) (“2013 Local Telephone Competition Report”).

<sup>65</sup> *Id.* at 13, Table 2.

<sup>66</sup> *Id.*

<sup>67</sup> Compare Industry Analysis and Technology Div., FCC, *Internet Access Services: Status as of December 31, 2009* at Table 1 (Dec. 2010) with Industry Analysis and Technology Div., FCC, *Internet Access Services: Status as of December 31, 2013* at Table 1 (October 2014).

providers are delivering Ethernet and other high-capacity services that vigorously compete with incumbent providers' special access services, with cable companies exceeding \$10 billion in business services revenue in 2014.<sup>70</sup>

In the face of this competition, ILECs – like any company in a competitive environment – have incentives to develop services that its customers want to buy. This includes both retail and wholesale services. If a customer chooses to take retail service from another company, it is better for an ILEC if that consumer takes its retail service from one of the ILEC's wholesale customers – and therefore generates wholesale revenues for the ILEC – instead of one of the many available intermodal options competitors offer. It makes good business sense, then, for ILECs to develop and offer wholesale services to serve their wholesale customers, including reasonable substitutes for outdated services that ILECs may seek to discontinue.

The tentative conclusion that ILECs – who are just one set of many competitors in the marketplace – must offer an equivalent replacement if they seek Section 214 approval to discontinue a service used as a wholesale input ignores these marketplace realities and the market-based incentives they create. And it steers the focus further away from the effect on end users, which is where the Section 214 focus should be.

Establishing a strict equivalence standard in practice could make it unnecessarily difficult to discontinue legacy services that consumers do not want or need. Instead of protecting competition, which is thriving without this tentative conclusion, a strict service equivalence standard would protect only individual competitors.

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<sup>68</sup> *2013 Local Telephone Competition Report* at 29, Table 18.

<sup>69</sup> *See id.* at 3, Figure 2.

<sup>70</sup> *See* Carol Wilson, "US Cable Nears \$10B in Business Service Revenues," Light Reading, Dec. 2, 2014, [http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-\\$10b-in-business-service-revenues/d/d-id/712347](http://www.lightreading.com/cable-video/cable-business-services/us-cable-nears-$10b-in-business-service-revenues/d/d-id/712347)

The Commission should instead consider marketplace conditions and the need for a substitute as just one factor in reviewing a Section 214 discontinuance application. Today's marketplace may not justify a need for a substitute at all. If the Commission does determine that a substitute is needed, it may be available from one of the many other providers in the marketplace. The Commission should consider the attributes of other services and determine whether they are sufficient substitutes. Other services may have different functionalities, features, and costs, for example, but they may in today's marketplace be perfectly acceptable substitutes for a service that an ILEC wants to discontinue. And the focus of the analysis should be on the retail end user customer, and whether there are reasonable alternative substitutes for them. The key question for the Commission is whether options exist for the end user, not whether they exist for particular competitors.

## **2. The Commission Should Not Adopt Unique Discontinuance Requirements for Carriers that Discontinue Tariffed Services**

Incumbent LECs today are just one of many competitive providers of communications services. The Commission should be looking to remove legacy distinctions and regulations that apply only to incumbents, such as the tariffing regime.<sup>71</sup> With few exceptions, the Commission has mandatorily detariffed non-dominant services. But ILEC services that are regulated as dominant generally remain subject to the tariffing regime.

There is no reason to exacerbate this distinction by establishing a unique requirement for ILECs who seek to discontinue tariffed services that are functionally similar to non-tariffed services they still offer and are similar to un-regulated, non-tariffed services offered by competitors. Whether or not Section 214 discontinuance authority is needed should not turn on

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<sup>71</sup> See, e.g., United States Telecom Ass'n, *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, WC Docket No. 14-192 (Oct. 6, 2014).

whether a service is tariffed. There already is a process for seeking authority to remove services from tariffs and for protesting those tariff changes. That process itself already has the potential to slow down ILECs' efforts to respond quickly to customer demands in the competitive marketplace. Adding a Section 214 approval requirement to that process without regard to whether service to a community is discontinued, reduced, or impaired would only further impede ILECs' efforts to compete. If a carrier continues to offer a service on a non-tariffed basis and service to a community is not discontinued, reduced, or impaired, there is no justification or need for a Section 214 application.

**3. A Change in Rates or Discounts, Including a Change in a Voluntary Term Discount Plan, Does Not Trigger Section 214**

The Commission has held that a change in rates, including changes in available discounts, does not implicate a Section 214 discontinuance, and it should not change its approach now.<sup>72</sup> The Commission's decades-old policy that a change in rates does not discontinue, reduce, or impair a service comports with the text of Section 214 and reflects that the Commission has other more appropriate tools with which to regulate rates. Section 201(b), for example, requires that rates be just and reasonable. Interested parties may seek relief from the Commission if they believe a provider's rates violate Section 201(b), and the Commission can commence a rate investigation on its own motion.

The rates, terms, and conditions associated with voluntary discount plans for special access services are under review in the Commission's comprehensive investigation into the state of special access competition. These term discount plans typically provide discounts off tariffed rates in exchange for certain commitments from the buyer. These discount plans are voluntary. They provide discounts off rates that are deemed by the Commission to be just and reasonable.

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<sup>72</sup> See *NPRM* ¶104.



No one is required to sign up for these voluntary plans, and if they disappeared tomorrow, the special access services would still be available at just and reasonable rates.

Thus, there is no basis for reversing decades of Commission precedent and deciding that a change or elimination of a voluntary discount plan constitutes a discontinuance under Section 214. If pricing changes were to be swept up in Section 214(a), there would be almost no limits to Section 214's reach. The D.C. Circuit – in upholding a Commission determination that Section 214(a) did not apply to a tariff change that eliminated an AT&T volume discount plan – found that eliminating a rate discount did not discontinue, reduce, or impair any service. Were the opposite true, the Court said, “virtually every rate increase might be argued to be a discontinuance of ‘service.’ ... The attendant burdens would be enormous.”<sup>73</sup>

All providers in a competitive marketplace need to be able to respond quickly to marketplace changes, and ILECs need to be able to offer their services at rates, terms, and conditions that make sense today. The delays and uncertainty associated with Section 214 process would hamper ILECs' attempts to respond to customer demands and marketplace changes. If the process is used to delay or prevent changes and perpetuate a legacy status quo, that will slow the transition to new services that will better serve customers.

While Verizon has explained that its voluntary discount plans are lawful, economically rational responses to marketplace conditions, the lawfulness of the discount plans' terms and conditions is under review in the Commission's special access proceeding. That proceeding is the appropriate forum for determining the level of regulation for special access services.

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<sup>73</sup> *Aeronautical Radio*, 642 F.2d at 1233.

## CONCLUSION

For these reasons, the Commission should continue to encourage providers to update their facilities and services so as to better serve customers and should not implement changes that would hamper their ability to introduce next-generation networks and services that will better serve the public.

Respectfully submitted,

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